

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1120 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SUO MOTU FOR ASHABEN J DAVE

Versus

STATE OF GUJARAT

Appearance:

SUO MOTU for Petitioner

Shri HH PATEL for Respondent No. 1

MR RD DAVE for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/03/2001

CAV JUDGEMENT

The petitioner is present in person. Shri HH Patel for respondent no.1 and Shri R.D.Dave for respondent no.2 are present. Arguments heard.

2 The learned counsel for respondent no.2 submits that the petitioner and other employees of the

Corporation were given the revised pay scale more than what it was recommended by the 5th Pay Commission but these benefits were given subject to sanction of the State Government.

3 The State Government so far has not decided the matter of sanction of the pay scales which have been given by the Corporation to its officers and employees. It is submitted that pending sanction of the revised pay scales, the Corporation has started giving the benefits of the same to its officers and employees. Ashaben J Dave who is petitioner in this petition was also given this revised pay scale and pending the approval of the revised pay scales she attained the age of superannuation and retired from the service. It is not disputed that her retiral benefits have also been calculated as per revised pay scale but she was not given the entire amount for which she was entitled on her retirement. The respondent-corporation has withheld 40% amount of the gratuity and encashment of leave which was payable to the petitioner. It is also not in dispute that the said amount comes to Rs.1,75,306. Shri Dave states that if ultimately the revised pay scales given to the petitioner and other employees/officers are not accepted by the State Government then the amount retained by the Corporation will be adjusted towards the difference amount.

4 I fail to see any justification whatsoever in this approach of the Corporation. The Corporation has revised the pay scales of its employees/officers and it was given effect to since 1998. The lady officer herein, Smt. A.J Dave, has received the salary during her service period as per revised pay scale and on her retirement the retiral benefits will have to be given to her accordingly. If the revised pay scales were subject to the approval of the State Government, I fail to see any justification in the action of the respondent no.2 in giving the benefits of the same to its officers / employees without first getting the same approved by the State Government. It is not a personal business establishment of the Chairman as well as other office-bearers of the Corporation. This is a matter where heavy financial burden is put on the Corporation by way of revision of pay scale of the employees/officers and when it is the matter of giving benefits of the revised pay scales to its employees/officers only after approval of the State Government the benefits could not have been given to the staff of the Corporation until approval thereof by the State Government. Once the Corporation has decided to give these benefits to its

officers, then, on retirement they cannot take this pretext that full retiral benefits are required to be calculated but cannot be given to her pending approval from the State Government of the revised pay scales. Once the benefits as per the revised pay scale have been given to the petitioner, she has a legitimate right to get her retirement benefits calculated on the said basis. Withholding of the amount under that pretext is wholly unjustified. The Corporation cannot take the benefit of its own wrongs. It is a case where without any fault on the part of the petitioner she is deprived for all these years the full amount of gratuity and encashment of leave aggregate of which comes to Rs.1,75,306 . It is a case where this amount has been withheld by the Corporation without there being any fault on the part of this lady and as such for this loss suffered she has to be compensated by the corporation. In case of 2000 AIR SCW 2678 the Supreme Court has held that where amount of retirement benefits has been withheld by the employer without there being any fault on the part of the employee, the employee is entitled for the interest on the delayed payment of retiral benefits. In that case the interest was awarded at the rate of 18% per annum on the delayed payment of retiral benefits. In this case also withholding of retiral dues of the petitioner is wholly unjustified and this delay is attributable to this lady. This is not a case where the petitioner is making a claim for which she is not legally entitled. When she has been paid her salary as per revised pay scale, she has legitimate expectation to calculate the retiral dues on the basis of the last drawn salary and the same is not arbitrary or against the basic principles of fair-play.

6 In the result, this petition succeeds and the same is allowed. It is hereby declared that the action of the respondent-corporation to withhold the amount of Rs.1,75,306 of the petitioner is wholly arbitrary and unjustified. The petitioner is entitled for this amount together with interest thereon at the rate of 18% from the due date. Respondent-corporation is directed to pay the amount of Rs.1,75,306.00 together with interest thereon @ 18% from the date of her retirement to the date of payment thereof within a period of 15 days from the date of receipt of writ of this order to the petitioner.

7 It is to be made clear that in case ultimately the State of Gujarat does not approve the revised pay scales as prescribed by the Corporation the benefits already received by the petitioner and this amount to be paid to the petitioner shall not be recovered from her.

This amount paid to the petitioner is to be recovered from all those members of the Board of Directors as well as the Officers of the Corporation who are responsible for releasing these benefits to the petitioner without first getting the approval thereof from the State Government.

8. Rule is made absolute accordingly with no order as to costs.

(mohd)